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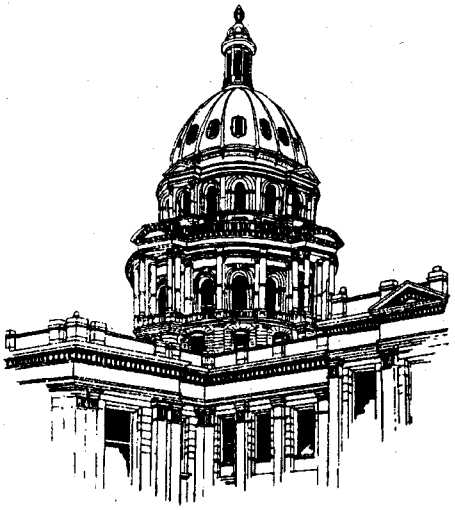
# 0507 Health Care Task Force

Colorado Legislative Council



# Health Care

# Task Force

**Report to the**

**COLORADO**

**GENERAL ASSEMBLY**

**Colorado Legislative Council**
**Research Publication No. 507**
**November 2002**

RECOMMENDATIONS FOR 2003

# HEALTH CARE TASK FORCE

**Report to the**
**Colorado General Assembly**

**Research Publication No. 507**
**December 2002**

# COLORADO GENERAL ASSEMBLY



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December 2002

To Members of the Sixty-third General Assembly:

Submitted herewith is the final report of the Health Care Task Force. This committee was created pursuant to Section 26-15-107, Colorado Revised Statutes. The purpose of the committee is to study a variety of health care issues over five years.

At its meeting on October15, 2002, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2003 session was approved.

Respectfully submitted,

/s/ Representative Doug Dean
Chairman
Legislative Council

DD/WG/jh

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*www.state.co.us/gov_dir/leg_dir/lcsstaff/2002/02interim.htm*

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## Members of the Committee

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Chairman
Senator Ken Chlouber
Senator John Evans
Senator Deanna Hanna
Senator Sue Windels

Representative Lauri Clapp,
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Representative Alice Madden
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# Executive Summary

## Committee Charge

Pursuant to Section 26-15-107, C.R.S., the Colorado Health Care Task Force is charged with studying 15 specific health-related issues. It is not limited to just those issues, however. In 2002, the Task Force examined a variety of issues over the course of four meetings. Topics of study included medical malpractice, obesity, the federal Health Insurance Portability and Accountability Act (HIPAA), the future of health care, and disparities in health outcomes. The Task Force is expected to continue its work for one more interim as it is scheduled to sunset on July 1, 2004.

## Committee Activities

The Task Force dedicated its first two meetings to examining 1) the national medical malpractice crisis and how Colorado may be effected; 2) obesity and the increased levels of morbidity and mortality attributed to it; and 3) compliance with HIPAA medical record confidentiality rules. Relative to other states, Colorado is not seeing the exorbitant malpractice insurance premiums that are driving physicians out of practice in other states. Obesity rates in Colorado are also good relative to other states although a significant portion (10 to 14 percent) of the state's adults are obese. The Task Force's review of HIPAA compliance issues illustrated the variety of parties affected and its associated expenses. Costs to the state alone are expected to be $26.6 million for compliance with the first two HIPAA rules (a total of seven rules will eventually be adopted). Additionally, ongoing maintenance costs for these two rules may reach $5.2 million annually.

The Task Force's third and fourth meetings focused on 1) the future of health care, particularly regarding advances in medical care and the aging population, and 2) disparities experienced by racial and ethnic minorities regarding access to care and health status. One of the greatest developments in medical care is expected to be the mapping of the human genome, the "parts list and instruction manual" for human beings. Aging baby boomers are also expected to be one of the most significant upcoming health care issues due to their large numbers and the resulting increased demand for services. The Task Force's review of health care disparities revealed significant differences in morbidity and mortality among different racial and ethnic groups. For example, diabetes-related deaths for Colorado's African Americans and Latinos is more than twice the rate for caucasians. Reasons given for such disparities include poverty, lack of education, decreased access to care, and systemic biases against persons of color.

## Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends three bills for consideration in the 2003 legislative session.

***Bill A — Changes to State Laws in Relation to the Federal "Health Insurance Portability and Accountability Act of 1996," as Amended.*** The bill makes changes to statutes that protect the privacy of health information so that they are consistent with the federal Health Insurance Portability and Accountability Act (HIPAA).

***Bill B — Creation of a Credit Against the State Income Tax for Moneys in Excess of a Specified Amount Expended by Senior Citizens on Prescription Drugs.*** The bill creates a state income tax credit for seniors for the annual amount expended above $1,200 for prescription drugs.

***Bill C — Penalties Relating to Unauthorized Insurance Policies.*** The bill increases the criminal penalty for the sale of policies of an insurance company not authorized to do business in Colorado to a class 1 misdemeanor.

# STATUTORY AUTHORITY AND RESPONSIBILITIES

Pursuant to Section 26-15-107, C.R.S., the Colorado Health Care Task Force must consider, but is not limited to, the following issues over five years:

- emerging trends in Colorado health care and their impact on consumers, including but not limited to:
  - relationships among health care providers, patients, and payors;
  - restrictions in health care options available to consumers and professional liability issues arising from these restrictions;
  - medical and patient record confidentiality;
  - health care work force requirements; and
  - home care in the continuum of care;
- the effect of recent shifts in the way health care is delivered and paid for;
- the ability of consumers to obtain and keep adequate, affordable health insurance coverage, including coverage for catastrophic illnesses;
- the effect of managed care on the ability of consumers to obtain timely access to quality care;
- the operation of the Medically Indigent Program;
- future trends for health care coverage rates for employees and employers;
- the role of public health programs and services;
- the social and financial costs and benefits of mandated health care coverage;
- the costs and benefits of providing preventive care and early treatment for people with chronic illnesses who may eventually need long-term care;
- innovative options for housing, home- and community-based services, and assisted living services for older people who can no longer live independently in their communities and possible funding options for these levels of care; and
- implementation of both short- and long-range recommendations on rate disparity and shortfalls within long-term care made by the task force created pursuant to footnote 50a of the 2000 budget bill.

# Committee Activities

During the 2002 interim, the Health Care Task Force examined a variety of issues over the course of four meetings. Topics of study included medical malpractice, obesity, the federal Health Insurance Portability and Accountability Act (HIPAA), the future of health care, and disparities in health outcomes.

## Background

The Task Force was enacted through the passage of House Bill 99-1019 and has conducted meetings during each of the four interims since the 1999 session. The 1999 and 2000 interim meetings were largely focused on issues of the uninsured but also included examinations of rising prescription drug costs, Medicaid waivers, and indigent care for the mentally ill. Three subcommittees were appointed by the Task Force in 1999 to study additional topics such as trends in Colorado health care, consumers' ability to obtain adequate health insurance, and mandated benefits. One bill regarding childhood immunizations was introduced by the Task Force during the 2000 session, but it was vetoed by the Governor.

Three bills were introduced by the Task Force in the 2001 regular session regarding medical savings accounts, prescription drug savings accounts, and a tax credit for prescription drug costs. Each of these bills was postponed indefinitely. Over the 2001 interim, the Task Force was charged with studying and making recommendations regarding long-term care for the elderly. Seven bills and one resolution related to that topic were introduced in the 2002 session. The four bills that were enacted addressed delivery of quality care, expansion of the Program of All-Inclusive Care for the Elderly, in-home support services, and a consumer-directed care pilot program.

## Medical Malpractice

***Scope of the issue.*** A medical malpractice crisis is occurring in many states throughout the country. The urgency of the issue arises from escalating malpractice insurance premiums. Doctors in a few states experienced 40 to 80 percent increases, and some high-risk specialities experienced increases upwards of 200 percent in 2002. Fortunately, Colorado practitioners have not seen these types of increases. According to Copic Insurance, the state's largest malpractice insurer, the overall rate increase for its insured doctors in 2002 was 6.7 percent. Copic's obstetricians/gynecologists and anesthetists, two high risk specialties, each experienced just 5.6 percent increases that year. Although it is difficult to determine exactly why Colorado has thus far avoided the malpractice crisis, the state's 1988 tort reforms (e.g. limits on damage awards) have been suggested as a contributing factor.

## Obesity

*Scope of the issue.* Over 60 percent of American adults are overweight or obese, and the prevalence of overweight adolescents has tripled in the last 20 years. Being overweight or obese is associated with increased rates of heart disease, certain types of cancer, type 2 diabetes, stroke, arthritis, and psychological disorders such as depression. Due to these issues and others, the economic cost of obesity in the United States was estimated to be $117 billion in 2000. These costs are borne by individuals through out-of-pocket expenses and health insurance premiums, public sector programs such as Medicaid, and by employers. Although Colorado's adult obesity rate is the lowest in the country (10 to 14 percent), the rate is increasing. The Department of Public Health and Environment's Chronic Disease Section is leading the effort to reduce Colorado's obesity rate by promoting better nutrition and increased physical activity.

## The Federal Health Insurance Portability and Accountability Act (HIPAA)

*Scope of the issue.* The recently released HIPAA medical record confidentiality rule will impact a wide variety of health care entities and cost the public and private sectors a substantial amount of money to comply. Under the new rule, patients are guaranteed access to their medical records, given more control over how their information is used, and provided an avenue of recourse if their medical privacy is compromised. The rule covers medical records maintained by certain providers, hospitals, health plans, health insurers, and health care clearinghouses. Costs associated with the privacy rule and other HIPAA rules are expected to be significant. The state alone is expected to expend $26.6 million for compliance with the first two HIPAA rules (a total of seven rules will eventually be adopted). Additionally, ongoing maintenance costs for these two rules may reach $5.2 million annually.

## The Future of Health Care

*Scope of the issue.* The Task Force's discussion of the future of health care focused on the Human Genome Project and other genomics issues, the aging baby boomers, and future health care workforce issues. The Human Genome Project is working toward the mapping of the human genome, the "parts list and instruction manual" for human beings. Once accomplished, the use of genetic information may be used to determine the efficacy of drugs in individual patients, enable the detection of diseases through fluid or tissue samples, and allow insertion of normal DNA into cells to correct genetic defects.

As the population ages, the anticipated strain on the health care system will be particularly pronounced in the need for long-term care. Although long-term care insurance is available and states such as Colorado offer tax incentives to purchase it, relatively few people have done so. In addition, Medicare does not cover long-term care and people who have purchased private coverage typically fall into higher income brackets. As a result, the

Medicaid program is expected to experience large increases in long-term care enrollment and its associated expenses in the near future.

Colorado currently has one of the country's best dentist to patient ratios, but the profession's high average age may lead to shortages in the future. The state is already experiencing shortages among primary care physicians and pharmacists. Most of these providers practice in the urban areas leading to unequal distribution of care and low provider to patient ratios in rural areas. Efforts that are currently underway to improve the future workforce situation include expanded educational programs, increased class sizes, favorable loan repayment options, and improved working conditions.

## Disparities in Health Outcomes

***Scope of the issue.*** Significant disparities in health outcomes exist nationally and locally for different racial and ethnic minority groups, women, and children. In Colorado, the Department of Public Health and Environment has found, for example, that the incidence of cervical cancer for Latinas is more than twice the rate for caucasian women and AIDS death rate for African Americans is more than three and a half times higher than the death rate for caucasians. Disparities experienced by women are illustrated by their higher likelihood than men to live with disabilities, depression, arthritis, Multiple Sclerosis, panic disorders, and eating disorders. Disparities among children are evident in such outcomes as higher low-birth weight rates and infant mortality rates among African Americans. Many of these disparities are attributed to inequities in income, education, health care access, representation in health care, and systemic biases.

# Summary of Recommendations

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

## Bill A — Concerning Changes to State Laws in Relation to the Federal "Health Insurance Portability and Accountability Act of 1996," as Amended.

The bill makes changes to statutes that protect the privacy of health information so that they are consistent with the federal Health Insurance Portability and Accountability Act (HIPAA). The bill clarifies that written authorization is necessary for release of confidential health information. It also clarifies that standards for privacy of individually identifiable health information applies to such things as 1) consent for disclosure of HIV-related health information; 2) disclosure of genetic information; and 3) disclosure of information related to the treatment of mentally ill persons.

## Bill B — Concerning the Creation of a Credit Against the State Income Tax for Moneys in Excess of a Specified Amount Expended by Senior Citizens on Prescription Drugs.

The bill creates a credit against the state income tax for the annual amount expended above $1,200 for prescription drugs. Eligibility is limited to senior citizens who do not have other drug coverage and who do not claim the amount in excess of $1,200 toward another tax deduction or credit. If the amount of credit exceeds the senior's income tax due, the amount of unused credit may be carried forward up to five years as a credit against future income taxes.

## Bill C — Concerning Penalties Relating to Unauthorized Insurance Policies.

The bill increases the criminal penalty for the sale of policies of an insurance company not authorized to do business in Colorado from a misdemeanor to a class 1 misdemeanor. The maximum sentence for a class 1 misdemeanor is 18 months imprisonment and/or a $5,000 fine. The minimum sentence is six months imprisonment and/or a $500 fine.

# Resource Materials

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303-866-2055). For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2002/02interim.htm

| Meeting Summaries | Topics Discussed |
|---|---|
| August 14, 2002 | Medical malpractice: overview among the states; Colorado tort reform; Colorado Board of Medical Examiners; perspectives of patient advocates, physicians, hospitals, insurers, and trial lawyers. |
| August 29, 2002 | Obesity: impact on morbidity and mortality; obesity in children and adolescents; public health and health plan approaches; Federal Health Insurance Portability and Accountability Act (HIPAA): overview of medical record confidentiality rules; Governor's Task Force on HIPAA Implementation; compliance by providers, hospitals, and health plans. |
| September 4, 2002 | The future of health care: The Human Genome Project and pharmacogenomics; genomics; bioethics and medical ethics; aging baby boomers; future health care workforce issues. |
| September 17, 2002 | Disparities in health care: disparities in Colorado; affected groups; recruitment and training in higher education; provider models; other states' approaches. |
| September 25, 2002 | Consideration of draft legislation. |

## Memoranda and Reports

*Assuring Cultural Competence in Health Care: Developing National Standards and an Outcomes-Focused Research Agenda,* Diversity Rx, Office of Minority Health, federal Department of Health and Human Services.

*Beyond 50.02, A Report to the Nation on Trends in Health Security,* American Association of Retired Persons, May 2002.

*Colorado Genetics Overview, Briefing Book*, Rose Community Foundation and Caring for Colorado Foundation, September 2002.

*Costs of Medical Injuries in Utah and Colorado*, Eric Thomas et al., Inquiry 36:255-264 (Fall 1999), Blue Cross and Blue Shield Association of the Rochester Area.

*Curing a Crisis in Medical Malpractice*, Draft National Conference of State Legislatures Legisbrief, expected publish date: October 2002.

*Frequently Asked Questions... The Health Care Workforce*, National Conference of State Legislatures.

*HHS Issues First Major Protections for Patient Privacy*, U.S. Department of Health and Human Services, August 2002.

*Healthy People 2010, Access to Quality Health Services*, Centers for Disease Control and Prevention, June 2002.

*Malpractice Crisis? Not Here!* Medical Economics, July 2002.

*Medical Liability Statutes, State Summary Chart,* National Conference of State Legislatures, Employment and Insurance Program, August 2002.

*Obesity Trends Among U.S. Adults Between 1985 and 2000,* Centers for Disease Control and Prevention.

*Profile of Health Disparities Among Communities of Color, Colorado 2001,* Jill Hunsaker Colorado Turning Point Initiative, Department of Public Health and Environment.

*Progress to Date on Statewide HIPAA Implementation*, A Memorandum to the Joint Budget Committee, Henry Sobanet, Office of State Planning and Budgeting, August 22, 2002.

*Projected Supply, Demand, and Shortages of Registered Nurses: 2000-2020,* Federal Health Resources and Services Administration, July 2002.

*Racial and Ethnic Disparities in Health Care*, National Conference of State Legislatures State Health Lawmakers' Digest, summer 2002.

## Bill A

**SENATE SPONSORSHIP**

**Hagedorn,** Evans, Hanna, and Windels

**HOUSE SPONSORSHIP**

**Clapp,** Madden, Romanoff, and Stafford

**A BILL FOR AN ACT**

CONCERNING CHANGES TO STATE LAWS IN RELATION TO THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED.

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Health Care Task Force.** Makes changes to statutes that protect the privacy of individually protected health information to make them consistent with the "Health Insurance Portability and Accountability Act of 1996" (HIPAA) and the regulations promulgated pursuant to such act. Clarifies that HIPAA and the standards for privacy of individually identifiable health information apply to:

- The consent for disclosure of HIV-related health information;
- The authorization and disclosure of genetic information;
- The use or disclosure of health information, including psychotherapy notes or therapy information;
- The use or disclosure of medical records;
- The disclosure of parentage information for judicial proceedings;
- Patient medical records in the custody of medical facilities and individual health are providers;
- The use and disclosure of artificial insemination information that is part of a designated record set;
- The use and disclosure of patient records of alcohol use and treatment and drug abuse and treatment for research purposes; and
- The use or disclosure of information related to the treatment of mentally ill persons.
- Clarifies that written authorization is necessary for the release of confidential health information.
- Defines relevant terms. Makes conforming amendments.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 10-3-1104.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**10-3-1104.5. HIV testing - declaration - definitions - requirements for testing and limitations on disclosure of test results.** (7) THE APPLICABLE FEDERAL REGULATIONS REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, REGARDING THE AUTHORIZATION FOR USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION SHALL APPLY TO THE CONSENT FOR DISCLOSURE REQUIRED BY SUBSECTIONS (3) AND (4) OF THIS SECTION.

**SECTION 2.** 10-3-1104.7 (1) (b), (3) (a), (4), and (5), Colorado Revised Statutes, are amended, and the said 10-3-1104.7 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**10-3-1104.7. Genetic testing - declaration - definitions - limitations on disclosure of information - liability - legislative declaration.** (1) The general assembly hereby finds and determines that recent advances in genetic science have led to improvements in the diagnosis, treatment, and understanding of a significant number of human diseases. The general assembly further declares that:

(b) Any information concerning an individual obtained through the use of genetic techniques may be subject to abuses if disclosed to unauthorized third parties without the ~~willing consent~~ WRITTEN AUTHORIZATION of the individual to whom the information pertains;

(3) (a) Information derived from genetic testing shall be confidential and privileged. Any release, for purposes other than diagnosis, treatment, or therapy, of genetic testing information that identifies the person tested with the test results released requires specific written ~~consent~~ AUTHORIZATION by the person tested.

(4) Notwithstanding the provisions of subsection (3) of this section, in the course of a criminal investigation or a criminal prosecution, and to the extent allowed under the federal or state constitution, any peace officer, district attorney, or assistant attorney general, or a designee thereof, may obtain information derived from genetic testing regarding the identity of any individual who is the subject of the criminal investigation or prosecution for use exclusively in the criminal investigation or prosecution without the ~~consent~~ WRITTEN AUTHORIZATION of the individual being tested.

(5) Notwithstanding the provisions of subsection (3) of this section, any research facility may use the information derived from genetic testing for scientific research purposes ~~so long as the identity of any individual to whom the information pertains is not disclosed to any third party~~ SUBJECT TO THE LIMITATION SPECIFIED IN SUBSECTION (14) OF THIS SECTION; except that the individual's identity may be disclosed to the individual's physician if the individual consents to such disclosure in writing.

(14) THE APPLICABLE FEDERAL REGULATIONS REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO:

(a) THE AUTHORIZATION REQUIRED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION AND PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION;

(b) THE DISCLOSURE FOR LAW ENFORCEMENT PURPOSES SPECIFIED IN SUBSECTIONS (4) AND (8) OF THIS SECTION;

(c) THE DISCLOSURE FOR JUDICIAL AND ADMINISTRATIVE PROCEEDINGS SPECIFIED IN SUBSECTIONS (6) AND (7) OF THIS SECTION; AND

(d) THE USE AND DISCLOSURE FOR RESEARCH PURPOSES AS PERMITTED IN SUBSECTION (5) OF THIS SECTION.

**SECTION 3.** 10-16-423, Colorado Revised Statutes, is amended to read:

**10-16-423. Confidentiality of health information.** (1) Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except:

(a) To the extent that it may be necessary to carry out the purposes of part 1 of this article or this part 4; ~~or~~

(b) Upon the ~~express consent~~ WRITTEN AUTHORIZATION of the enrollee or applicant; ~~or pursuant to statute or~~

(c) AS REQUIRED OR PERMITTED BY STATE STATUTE OR FEDERAL LAW OR REGULATION;

(d) AS REQUIRED BY court order for the production of evidence or the discovery thereof; or

(e) In the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent.

(2) A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure ~~which~~ that the provider, who furnished such information to the health maintenance organization, is entitled to claim.

(3) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION TO SUBSECTION (1) OF THIS SECTION AND TO ANY USE OR DISCLOSURE OF PSYCHOTHERAPY NOTES, AS DEFINED BY THE FEDERAL STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164), PERMITTED BY THIS SECTION.

**SECTION 4.** 12-43-218 (1) and (5), Colorado Revised Statutes, are amended, and the said 12-43-218 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**12-43-218. Disclosure of confidential communications.** (1) A licensee, school psychologist, registrant, or unlicensed psychotherapist shall not disclose, without the ~~consent~~ WRITTEN AUTHORIZATION of the client, any confidential communications made by the client, or advice given thereon, in the course of professional employment; nor shall a licensee's, school psychologist's, registrant's, or unlicensed psychotherapist's employee or associate, whether clerical or professional, disclose any knowledge of said communications acquired in such capacity; nor shall any person who has participated in any therapy conducted under the supervision of a licensee, school psychologist, registrant, or unlicensed psychotherapist, including, but not limited to, group therapy sessions, disclose any knowledge gained during the course of such therapy without the ~~consent~~ WRITTEN AUTHORIZATION of the person to whom the knowledge relates.

(5) Nothing in this section shall be deemed to prohibit any other USES OR disclosures ~~required~~ PERMITTED by STATE OR FEDERAL law OR REGULATION.

(6) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO THIS SECTION.

**SECTION 5.** 18-4-412 (2) (c), Colorado Revised Statutes, is amended, and the said 18-4-412 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**18-4-412. Theft of medical records or medical information - penalty.** (2) As used in this section:

(c) "Proper authorization" means:

(I) A written authorization signed by the patient or his or her duly designated representative; or

(II) An appropriate order of court; or

(III) AN authorized OR PERMITTED USE, DISCLOSURE, OR possession pursuant to STATE OR FEDERAL law or regulation. ~~for claims processing.~~

~~possession for medical audit or quality assurance purposes, possession by a consulting physician to the patient, or possession by hospital personnel for record-keeping and billing purposes; or~~

(IV) ~~Authorized possession pursuant to section 18-7-201.5, 18-7-205.5, or 18-3-415.5, or section 30-10-606 (6), C.R.S.~~

(5) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO SUBSECTION (2) OF THIS SECTION.

**SECTION 6.** 19-1-308, Colorado Revised Statutes, is amended to read:

**19-1-308. Parentage information.** (1) Notwithstanding any other law concerning public hearings and records, any hearing or trial held under article 4 of this title shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. In addition to access otherwise provided for pursuant to section 19-1-303, all papers and records pertaining to the action or proceeding ~~which~~ THAT are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys of record, and such parties and their attorneys shall be subject to a court order which shall be in effect against all parties to the action prohibiting such parties from disclosing the genetic testing information contained in the court's record. Such court papers and records shall not be subject to inspection by any person not a party to the action except upon consent of the court and all parties to the action, or, in exceptional cases only, upon an order of the court for good cause shown. All papers and records in the custody of the county department of social services shall be available for inspection by the parties to the action only upon the consent of all parties to the action and as provided by section 26-1-114, C.R.S., or by the rules governing discovery, but such papers and records shall not be subject to inspection by any person not a party to the action except upon consent of all parties to the action; except that the results of genetic testing may be provided to all parties, when available, notwithstanding laws governing confidentiality and without the necessity of formal discovery. Any person receiving or inspecting paternity information in the custody of the county department of social services shall be subject to a court order which shall be in effect prohibiting such persons from disclosing the genetic testing information contained in the department's record.

(2) THE APPLICABLE FEDERAL REGULATIONS REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO THE DISCLOSURE FOR JUDICIAL PROCEEDINGS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

**SECTION 7.** 19-4-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**19-4-106. Artificial insemination.** (3) THE APPLICABLE FEDERAL REGULATIONS REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO:

(a) THE DISCLOSURE TO OR BY THE COURT AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION; AND

(b) AN INDIVIDUAL'S ACCESS TO PROTECTED HEALTH INFORMATION ABOUT SUCH INDIVIDUAL IN A DESIGNATED RECORD SET, TO THE EXTENT THAT THIS SECTION PROHIBITS A WOMAN WHO IS ARTIFICIALLY INSEMINATED FROM ACCESSING INFORMATION PERTAINING TO THE INSEMINATION IN A DESIGNATED RECORD SET. "DESIGNATED RECORD SET" SHALL BE DEFINED PURSUANT TO 45 CFR PART 164.501.

**SECTION 8.** 25-1-801 (1) (a), (1) (b), and (2), Colorado Revised Statutes, are amended, and the said 25-1-801 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-1-801. Patient records in custody of health care facility.** (1) (a) Every patient record in the custody of a health facility licensed or certified pursuant to section 25-1-107 (1) or article 3 of this title, or both, or any entity regulated under title 10, C.R.S., providing health care services, as defined in section 10-16-102 (22), C.R.S., directly or indirectly through a managed care plan, as defined in section 10-16-102 (26.5), C.R.S., or otherwise shall be available for inspection to the patient or the patient's designated representative through the attending health care provider or such provider's designated representative ~~at reasonable times and upon reasonable notice~~ UPON SUBMISSION OF A WRITTEN REQUEST FOR RECORDS, DATED AND SIGNED BY THE PATIENT OR THE PATIENT'S DESIGNATED REPRESENTATIVE, except records pertaining to mental health problems or notes by a physician that, in the opinion of a licensed physician who practices psychiatry and is an independent third party, would have significant negative psychological impact upon the patient. Such independent third-party physician shall consult with the attending physician prior to making a determination with regard to the availability for inspection of any patient record and shall report in writing findings to the attending physician and to the custodian of said record. A summary of records pertaining to a patient's mental health problems may, upon written request and signed and dated authorization, be made available to the patient or the patient's designated representative following termination of the treatment program.

(b) (I) Following any treatment, procedure, or health care service rendered by a health facility licensed or certified pursuant to section 25-1-107 (1) or article 3 of this title, or both, or by an entity regulated under title 10, C.R.S., providing health care services, as defined in section 10-16-102 (22), C.R.S., directly or indirectly through a managed care plan, as defined in section 10-16-102 (26.5), C.R.S., or otherwise, copies of said records, including X rays, shall be furnished to the patient OR THE PATIENT'S DESIGNATED REPRESENTATIVE upon submission of a written ~~authorization request~~ REQUEST for records, dated and signed by the patient OR THE PATIENT'S DESIGNATED REPRESENTATIVE, and upon the payment of the reasonable costs.

(II) In the event that a licensed health care professional determines that a copy of any X ray, mammogram, CT SCAN, MRI, or other film is not sufficient for diagnostic or other treatment purposes, the health facility or entity shall make the original of any such film available to the patient or another health care professional or facility as specifically directed by the patient pursuant to a written ~~authorization request~~ REQUEST for films and upon the payment of the reasonable costs for such film. If a health facility releases an original film pursuant to this subparagraph (II), it shall not be responsible for any loss, damage, or other consequences as a result of such release. Any

original X ray, mammogram, CT SCAN, MRI, or other film made available pursuant to this subparagraph (II) shall be returned upon request to the lending facility within thirty days.

(2) All requests by ~~patients~~ A PATIENT OR SUCH PATIENT'S DESIGNATED REPRESENTATIVE for inspection of ~~their~~ SUCH PATIENT'S medical records made under this section shall be noted with the time and date of ~~the patient's~~ such request, and the time and date of inspection noted by the attending health care provider or his OR HER designated representative. The patient OR HIS OR HER DESIGNATED REPRESENTATIVE shall acknowledge the fact of his OR HER inspection by dating and signing his OR HER record file.

(5) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO SUBSECTION (1) OF THIS SECTION.

**SECTION 9.** 25-1-802 (1), (3), and (4), Colorado Revised Statutes, are amended, and the said 25-1-802 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-1-802. Patient records in custody of individual health care providers.** (1) (a) Every patient record in the custody of a podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist, audiologist, acupuncturist, direct-entry midwife, or physical therapist required to be licensed under title 12, C.R.S., or a person practicing psychotherapy under the provisions of article 43 of title 12, C.R.S., ~~except records pertaining to mental health problems.~~ shall be available FOR INSPECTION to the patient OR THE PATIENT'S DESIGNATED REPRESENTATIVE upon submission of a written ~~authorization request~~ REQUEST for inspection of records, dated and signed by the patient ~~at reasonable times and upon reasonable notice~~ OR THE PATIENT'S DESIGNATED REPRESENTATIVE, EXCEPT FOR RECORDS PERTAINING TO MENTAL HEALTH PROBLEMS OR NOTES BY A PHYSICIAN THAT, IN THE OPINION OF A LICENSED PHYSICIAN WHO PRACTICES PSYCHIATRY AND IS AN INDEPENDENT THIRD PARTY PHYSICIAN, WOULD HAVE A SIGNIFICANT NEGATIVE PSYCHOLOGICAL IMPACT UPON THE PATIENT. SUCH INDEPENDENT THIRD PARTY PHYSICIAN SHALL CONSULT WITH THE ATTENDING PHYSICIAN PRIOR TO MAKING A DETERMINATION REGARDING THE AVAILABILITY FOR INSPECTION OF ANY PATIENT RECORD, AND SHALL REPORT IN WRITING ANY FINDINGS TO THE ATTENDING PHYSICIAN AND TO THE CUSTODIAN OF SUCH RECORD. A summary of records pertaining to a patient's mental health problems may, upon written request and signed and dated authorization, be made available to the patient or the patient's designated representative following termination of the treatment program.

(b) (I) A copy of such records, including X rays, shall be made available to the patient or the patient's designated representative, upon written ~~authorization request~~ REQUEST for a copy of such records, dated and signed by the patient OR THE PATIENT'S DESIGNATED REPRESENTATIVE, upon reasonable notice and payment of the reasonable costs.

(II) In the event that a licensed health care professional determines that a copy of any X ray, mammogram, CT SCAN, MRI, or other film is not sufficient for diagnostic or other treatment purposes, the podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse,

optometrist, audiologist, acupuncturist, direct-entry midwife, or physical therapist required to be licensed under title 12, C.R.S., or, subject to the provisions of section 25-1-801 (1) (a) and paragraph (a) of this subsection (1), the person practicing psychotherapy under the provisions of article 43 of title 12, C.R.S., shall make the original of any such film available to the patient or another health care professional or facility as specifically directed by the patient pursuant to a written ~~authorization request~~ REQUEST for films and upon the payment of the reasonable costs for such film. If a practitioner releases an original film pursuant to this subparagraph (II), the practitioner shall not be responsible for any loss, damage, or other consequences as a result of such release. Any original X ray, mammogram, CT SCAN, MRI, or other film made available pursuant to this subparagraph (II) shall be returned upon request to the lending practitioner within thirty days.

(3) ~~For purposes of this section, "patient record" does not include a doctor's office notes.~~

(4) All requests by patients OR THEIR DESIGNATED REPRESENTATIVES for inspection of their medical records made under this section shall be noted with the time and date of the patient's OR HIS OR HER DESIGNATED REPRESENTATIVE'S request and the time and date of inspection noted by the health care provider or his OR HER designated representative. The patient OR HIS OR HER DESIGNATED REPRESENTATIVE shall acknowledge the fact of his OR HER inspection by dating and signing his OR HER record file.

(6) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO THIS SECTION.

**SECTION 10.** 25-1-312 (2), Colorado Revised Statutes, is amended, and the said 25-1-312 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-1-312. Records of alcoholics and intoxicated persons.** (2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of alcoholism, ~~Information under this subsection (2) shall not be published in a way that discloses patients' names or other identifying information~~ SUBJECT TO THE LIMITATION SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

(3) THE APPLICABLE FEDERAL REGULATIONS REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO THE USE AND DISCLOSURE FOR RESEARCH PURPOSES PERMITTED IN SUBSECTION (2) OF THIS SECTION.

**SECTION 11.** 25-1-1108 (2), Colorado Revised Statutes, is amended, and the said 25-1-1108 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**25-1-1108. Records of drug abusers and persons under the influence of drugs.** (2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of drug abuse. ~~Information under this subsection (2) shall not be published in a way that discloses patients' names or~~

~~other identifying information~~ SUBJECT TO THE LIMITATION SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

(3) THE APPLICABLE FEDERAL REGULATIONS REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO THE USE AND DISCLOSURE FOR RESEARCH PURPOSES PERMITTED IN SUBSECTION (2) OF THIS SECTION.

**SECTION 12.** 27-10-120 (1) (b), (1) (d), and (1) (h), Colorado Revised Statutes, are amended, and the said 27-10-120 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**27-10-120. Records.** (1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services under this article to individuals under any provision of this article shall be confidential and privileged matter. Such information and records may be disclosed only:

(b) When the recipient of services designates persons to whom information or records may be released PURSUANT TO A WRITTEN AUTHORIZATION; but, if a recipient of services is a ward or conservatee and his OR HER guardian or conservator designates, in writing, persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional personnel to reveal information ~~which~~ THAT has been given to them in confidence by members of a patient's family or other informants;

(d) If the department has promulgated rules for the conduct of research. Such rules shall include, but not be limited to, the requirement that all researchers must sign an oath of confidentiality, ~~All identifying information concerning individual patients, including names, addresses, telephone numbers, and social security numbers, shall not be disclosed for research purposes~~ SUBJECT TO THE LIMITATIONS SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

(h) To adult family members actively participating in the care and treatment of a mentally ill person regardless of the length of such participation. The information released pursuant to this paragraph (h) shall be limited to ~~one or more of the following: The diagnosis, the prognosis, the need for hospitalization and anticipated length of stay, the discharge plan, the medication administered and side effects of such medication, and the short-term and long-term treatment goals~~ THE INFORMATION DIRECTLY RELEVANT TO SUCH FAMILY MEMBERS' INVOLVEMENT WITH THE MENTALLY ILL PERSON'S CARE OR TREATMENT OR PAYMENT RELATED TO SUCH CARE OR TREATMENT. Such disclosure is governed by the procedures in section 27-10-120.5 (2) and is subject to review under section 27-10-120.5.

(3) (a) NOTHING IN THIS SECTION SHALL PROHIBIT ANY OTHER USE OR DISCLOSURE REQUIRED OR PERMITTED BY STATE OR FEDERAL LAW OR REGULATION.

(b) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO THIS SECTION.

**SECTION 13.** 27-10-120.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**27-10-120.5. Request for release of information - procedures - review of a decision concerning release of information.** (9) THE APPLICABLE FEDERAL REGULATIONS, REGARDING THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (45 CFR PARTS 160 AND 164) OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (42 U.S.C. SEC. 1320d TO 1320d-8), AS AMENDED, SHALL APPLY TO ANY USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO THIS SECTION.

**SECTION 14. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

DRAFT

*Colorado Legislative Council Staff*

# NO FISCAL IMPACT

| | | | |
|---|---|---|---|
| **Drafting Number:** | LLS 03-0101 | **Date:** | November 20, 2002 |
| **Prime Sponsor(s):** | Sen. Hagedorn<br>Rep. Clapp | **Bill Status:** | Health Care Task Force |
| | | **Fiscal Analyst:** | Teresa Wilson (303-866-4976) |

**TITLE:** CONCERNING CHANGES TO STATE LAWS IN RELATION TO THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED.

**Summary of Assessment**

This bill changes provisions of state law regarding health information privacy to make it consistent with the federal Health Insurance Portability and Accountability Act of 1996 (HIPPA). HIPPA allows for health insurance portability; medical savings accounts; and creates national standards to protect individual personal health information and patients' access to their medical records. The standards for privacy cover health plans, health clearing houses, and those health care providers who conduct certain financial and administrative transactions electronically. The standards include requirements for the type of information and format that must be included in disclosure and authorization forms. This bill clarifies that written authorization is necessary for the release of confidential health information. Several state statutes will be amended to conform to the privacy standards established by HIPPA. This bill does not create additional costs to the state above those incurred as a result of the federal regulations. The bill is effective upon signature of the Governor.

***Background.*** In February of 2002, the Governor issued an executive order creating the Governor's Task Force on HIPPA Implementation. The task force mission is to coordinate statewide efforts, and ensure compliance and implementation. These new federal regulations apply to numerous state departments and require full compliance.

Full implementation of HIPPA will include several rules. Currently, only two major rules are final: standard transaction codes and standards for privacy. An additional rule related to the security of health information is expected in early 2003. The compliance deadline for the transactions code rule is October 16, 2003, and the compliance deadline for the privacy rule is April 14, 2003.

The departments with the greatest exposure to HIPPA requirements, Health Care Policy and Financing (DHCPF), Human Services (DHS), and Public Health and Environment (DPHE), have completed impact assessments and have made progress in implementing compliance measures. However, these departments and others may identify additional administrative and operational areas that need modification to meet the requirements of HIPPA.

*Costs.* According to the Governor's Office of State Planning and Budgeting (OSPB), estimates indicate the total costs to the state for compliance with the first two HIPPA rules is $26.6 million. Of this $26.6 million, estimated costs include $20.4 million for the transactions code sets rule, and $6.2 million for the privacy rule. Depending upon implementation choices, ongoing expenses could reach an additional $5.2 million.

To date, the costs for HIPPA implementation partially include monies that have already been appropriated and some diversion of internal resources. In the last three fiscal years, approximately $16.2 million has been appropriated to various areas of HIPPA implementation as detailed in Table 1. As the total costs are unknown, any future costs will be identified by the HIPPA task force and additional funding may be requested. **All additional costs are attributable to implementation of the federal rules, not this statutory change.**

**Table 1 - Historic Appropriations for HIPPA**

| Department | GF | CF | CFE | FF | Description |
|---|---|---|---|---|---|
| **FY 2002-03** | | | | | |
| DHS | $ 162,400 | $ 34,800 | $ 136,212 | | 1 FTE and program implementation |
| DHCPF | $ 70,180 | | $ 6,250 | $ 222,146 | 5 FTE - implementation staffing |
| DHCPF | $ 2,753,374 | | $ 180,967 | $ 8,596,204 | Contract costs for transaction code implementation |
| DHCPF | $ 520,407 | | $ 46,351 | $ 1,647,299 | Implementation of central state appropriations, all funds transferred to Governor's Office for central oversight |
| DPHE | $ 259,090 | | | | Implementation costs |
| **FY 2001-02** | | | | | |
| DHCPF | $ 118,658 | | $ 13,592 | $ 1,032,772 | Feasibility study and implementation |
| DHS | $ 385,240 | | | | Assessment |
| **FY 2000-01** | | | | | |
| DHCPF | $ 13,125 | | | $ 39,375 | Feasibility study request for proposal |
| **Total** | **$4,282,474** | **$ 34,800** | **$ 383,372** | **$11,537,796** | |

**Departments Contacted**

Governor's Office
Health Care Policy and Financing
Higher Education
Human Services
Judicial
Law
Personnel
Public Health and Environment
Regulatory Agencies

# Bill B

**SENATE SPONSORSHIP**

**Evans** and Chlouber

**HOUSE SPONSORSHIP**

**Stafford** and Clapp

## A BILL FOR AN ACT

CONCERNING THE CREATION OF A CREDIT AGAINST THE STATE INCOME TAX FOR MONEYS IN EXCESS OF A SPECIFIED AMOUNT EXPENDED BY SENIOR CITIZENS ON PRESCRIPTION DRUGS.

### Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Health Care Task Force.** For specified income tax years, creates a credit against the state income tax equal to the entire amount expended in excess of a specified amount by a senior citizen on prescription drugs during the taxable year for which the credit is claimed.

Specifies that the tax credit shall not be allowed to any taxpayer who is:

- Entitled to reimbursement or coverage for the purchase of prescription drugs through an individual or group health benefit plan; or
- Eligible for medical assistance pursuant to the "Colorado Medical Assistance Act".

Specifies that the tax credit shall not be allowed to the extent the amount claimed for purposes of satisfying the requirements of the tax credit is otherwise claimed as a deduction or credit for federal or state income tax purposes.

Provides that, if the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of the income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward and used as a credit against the taxpayer's subsequent year's income tax liability for a period not to exceed 5 years and shall be applied first to the earliest income tax years possible. Provides that any credit remaining after such period shall not be refunded or credited to the taxpayer.

Authorizes the executive director of the department of revenue to promulgate rules for the implementation of the tax credit.

Defines terms.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Part 1 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-22-129. Credit for expenses incurred by senior citizens in purchasing prescription drugs - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DRUG" HAS THE SAME MEANING AS SET FORTH IN SECTION 12-22-102 (11), C.R.S.

(b) "ORDER" HAS THE SAME MEANING AS SET FORTH IN SECTION 12-22-102 (22.5), C.R.S.

(c) "PRACTITIONER" HAS THE SAME MEANING AS SET FORTH IN SECTION 12-22-102 (27), C.R.S.

(d) "PRESCRIPTION DRUG" MEANS A DRUG REQUIRED BY LAW TO BE DISPENSED BY AN ORDER FROM A PRACTITIONER.

(e) "TAXPAYER" MEANS A RESIDENT INDIVIDUAL WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER IN ANY INCOME TAX YEAR FOR WHICH SAID TAXPAYER INTENDS TO CLAIM THE CREDIT CREATED IN SUBSECTION (2) OF THIS SECTION.

(2) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2004, THERE SHALL BE ALLOWED TO EACH TAXPAYER A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE ENTIRE AMOUNT EXPENDED BY THE TAXPAYER IN EXCESS OF ONE THOUSAND TWO HUNDRED DOLLARS ON PRESCRIPTION DRUGS DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IN NO EVENT SHALL THE CREDIT CREATED IN SUBSECTION (2) OF THIS SECTION BE ALLOWED:

(a) TO ANY TAXPAYER WHO IS:

(I) ENTITLED TO REIMBURSEMENT OR COVERAGE FOR THE PURCHASE OF PRESCRIPTION DRUGS THROUGH AN INDIVIDUAL OR GROUP HEALTH BENEFIT PLAN AS DEFINED IN SECTION 10-16-102 (21), C.R.S.; OR

(II) ELIGIBLE FOR MEDICAL ASSISTANCE PURSUANT TO ARTICLE 4 OF TITLE 26, C.R.S.; OR

(b) TO THE EXTENT THE AMOUNT CLAIMED FOR PURPOSES OF SATISFYING THE REQUIREMENTS OF THIS SECTION IS OTHERWISE CLAIMED AS A DEDUCTION OR CREDIT FOR FEDERAL OR STATE INCOME TAX PURPOSES.

(4) IF THE AMOUNT OF THE CREDIT ALLOWED PURSUANT TO THE PROVISIONS OF THIS SECTION EXCEEDS THE AMOUNT OF THE INCOME TAXES OTHERWISE DUE ON THE TAXPAYER'S INCOME IN THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SAID INCOME TAX YEAR MAY BE CARRIED FORWARD AND USED AS A CREDIT AGAINST THE TAXPAYER'S SUBSEQUENT YEAR'S INCOME TAX LIABILITY FOR A PERIOD NOT TO EXCEED FIVE YEARS AND SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE. ANY CREDIT REMAINING AFTER SUCH PERIOD SHALL NOT BE REFUNDED OR CREDITED TO THE TAXPAYER.

(5) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES FOR THE IMPLEMENTATION OF THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

**SECTION 2. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

DRAFT

*Colorado Legislative Council Staff*

# STATE FISCAL IMPACT

**Drafting Number:** LLS 03-0105
**Prime Sponsor(s):** Sen. Evans
Rep. Stafford

**Date:** December 15, 2002
**Bill Status:** Health Care Task Force
**Fiscal Analyst:** Harry Zeid (303-866-4753)

**TITLE:** CONCERNING THE CREATION OF A CREDIT AGAINST THE STATE INCOME TAX FOR MONEYS IN EXCESS OF A SPECIFIED AMOUNT EXPENDED BY SENIOR CITIZENS ON PRESCRIPTION DRUGS.

| Fiscal Impact Summary | FY 2003/2004 | FY 2004/2005 |
|---|---|---|
| **State Revenues** General Fund | ($6,682,000) | ($14,224,000) |
| **State Expenditures** General Fund | | $61,339 |
| **FTE Position Change** | 0.0 FTE | 0.7 FTE |
| **Other State Impact:** Future TABOR Impact | | |
| **Effective Date:** 90 days after adjournment (August 5, 2003) unless a referendum petition is filed; and applies to income tax years commencing on or after January 1, 2004. | | |
| **Appropriation Summary for FY 2003/2004:** None Required | | |
| **Local Government Impact:** None Identified | | |

## Summary of Legislation

This bill provides for a new state income tax credit for individuals who are 65 years of age or older. Beginning with the 2004 income tax year, the tax credit would be equal to the annual amount expended on prescription drugs that is in excess of $1,200. The income tax credit would not apply to any taxpayer who is entitled to reimbursement or coverage for the purchase of prescription drugs through an individual or group health benefit plan or who is Medicaid eligible. Additionally, the tax credit would not be allowed for the cost of prescription drugs that are otherwise claimed as a deduction or credit for federal or state income tax purposes. The tax credit is not refundable but may be carried forward for a period of up to five years.

**State Revenues**

***Background.*** According to a July, 2002 study published in Health Affairs, 23 percent of all Colorado seniors have no prescription drug coverage. Among poor seniors (income below 100 percent of the federal poverty level), 38 percent had no prescription drug coverage. Twenty-five percent of seniors with income between 100 percent and 200 percent of poverty level had no prescription drug coverage. Twenty percent of seniors with income above 200 of the poverty level had no prescription drug coverage.

A national study that measured access to health care for seniors from 1996 to1999 was conducted by the Barents Group. The Medicare Current Beneficiary Survey (MCBS) showed a greater percentage of seniors nationwide without prescription drug coverage than the study published in Health Affairs. The Barents Group analysis showed that no prescription drug coverage was available to 39 percent of seniors with income under $10,000; 44 percent of seniors with incomes between $10,000 and $20,000; 35 percent of seniors with incomes between $20,000 and $30,000; and 32 percent with incomes greater than $30,000.

According to testimony on March 7, 2002, on behalf of the Congressional Budget Office (CBO), the average per capita drug expenditure for seniors in 2003 will be $2,400. The CBO estimates that average spending for prescription drugs will grow at an average annual rate of about ten percent per beneficiary over the 2003-2012 period. By 2012, the CBO estimates that the average annual prescription drug expenditure per beneficiary will be $5,820. The CBO projects that on a household basis during calendar year 2005, over 64 percent of Medicare enrollees will spend more than $1,000 on prescription drugs and that nearly one-half will pay more than $2,000.

***Impact on State Revenues.*** The bill allows individuals, aged 65 and older, to claim an income tax credit equal to their prescription drug expenditures over $1,200, provided that the qualified individuals are not Medicaid recipients and have no prescription drug coverage through their health benefit plan.

The 1999 federal state income tax database was used to estimate the impact of the bill incorporating the data identified above. Projections of income and economic growth were used to adjust the 1999 data for income tax years 2004 and 2005. Since the tax credit is nonrefundable, the estimated value of the credit is limited to the amount of gross tax owed by qualified individuals in that income tax year.

Although income tax year 2004 income tax returns will not be submitted until the beginning of 2005, one half of the liabilities are accrued in FY 2004-05. Table 1 identifies the estimated General Fund revenue reduction for FY 2003-04 and FY 2004-05 based upon prescription drug coverage data for Colorado residents published in the Health Affairs study. Using national data from the Barents analysis would have yielded a total tax credit value approximately 60 percent greater than using Colorado averages.

**Table 1. Estimated General Fund Revenue Reduction for FY 2003-04 and FY 2004-05**

| | |
|---|---|
| **Income Tax Year 2004** | |
| Number of Eligible Returns | 16,737 |
| Amount Claimed for Credit | $13,364,000 |
| **Income Tax Year 2005** | |
| Number of Eligible Returns | 17,243 |
| Amount Claimed for Credit | $15,083,000 |
| **Fiscal Year Accrual Adjustment** | $6,682,000 |
| FY 2003-04 | $14,224,000 |
| FY 2004-05 | |

**State Expenditures**

The income tax credit for prescription drugs will require a new line on the individual income tax return beginning with the 2004 return to be filed by taxpayers in 2005. Due to the high potential for fraud and the fact that there is no cap on the amount of the credit that may be claimed, the tax credit will be tracked by the Department of Revenue. Tracking returns that claim the credit will help identify returns for audit compliance purposes. Since information claimed on the credit line cannot be matched with any information provided on federal income tax returns, the audit process will be manual.

The Department of Revenue will require **$61,339 and 0.7 FTE** in **FY 2004-05** and **$450** each fiscal year thereafter in order to implement the bill. A total of 1,370 hours of computer programming will be required to modify system computer codes, including1,028 hours for a new line and key on the department's main frame computer, 228 hours for modifications to the Netfile system, and 114 hours for changes to the FSEF system. This additional workload represents the equivalent of 0.7 FTE (1,370 hours / 2,080 hours per year = 0.7 FTE Information Technology Professional III) at a job rate of $44 per hour, or $60,280. Additional one-time expenses include $350 for operating expenses and $259 for telephone expenses. Ongoing expenses of $450 will also be required for data entry. Approximately 300 additional hours of one-time computer programming will be required for changes to the Telefile system and the Fair Share programs, but can be absorbed within existing department resources during the course of the annual system re-write.

It should be noted that the computer programming resources and one-time operating expenses identified in this fiscal note may also be included in the FY 2004-05 Long Bill appropriation for the Department of Revenue in that year. If these resources are provided in the Long Bill, no further appropriation for computer programming or operating expenses will be necessary to implement the bill.

**Expenditures Not Included**

Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:

- health and life insurance costs;
- short-term disability costs;
- inflationary cost factors;
- leased space; and
- indirect costs.

**State Appropriations**

The fiscal note implies that no appropriation or spending authority will be required in FY 2003-04 in order to implement the provisions of the bill.

**Departments Contacted**

| | |
|---|---|
| Revenue | Legislative Council Staff |

# Bill C

**SENATE SPONSORSHIP**

**Hagedorn**

**HOUSE SPONSORSHIP**

Clapp, Madden, Romanoff, and Stafford

**A BILL FOR AN ACT**

CONCERNING PENALTIES RELATING TO UNAUTHORIZED INSURANCE POLICIES.

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Health Care Task Force.** Increases to a class 1 misdemeanor the criminal penalty for the sale of policies of an insurance company not authorized to do business in Colorado.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 10-3-104, Colorado Revised Statutes, is amended to read:

**10-3-104. Unauthorized companies - penalties.** Except for reinsurance by an authorized insurer or insurance effected pursuant to the provisions of PART 7 OF ARTICLE 4 OR article 5 OR ARTICLE 15 of this title, it is unlawful for any person, company, or corporation in this state to procure, receive, or forward applications for insurance in, or to issue or to deliver policies for, any company not legally authorized to do business in this state, as provided in this title, ~~(except part 7 of article 4 and article 15),~~ article 7 of title 12, and article 14 of title 24, C.R.S. Any person violating the provisions of this section is guilty of a ~~misdemeanor~~ CLASS 1 MISDEMEANOR and, upon conviction thereof, shall be punished ~~by a fine of one hundred dollars, or by imprisonment for two months in the county jail, or by both such fine and imprisonment for each such offense~~ AS PROVIDED IN SECTION 18-1.3-501, C.R.S.

**SECTION 2.** 10-3-111, Colorado Revised Statutes, is amended to read:

**10-3-111. Violations - penalty.** EXCEPT FOR VIOLATIONS OF SECTION 10-3-104 OR OF PART 7 OF ARTICLE 4 OR ARTICLE 15 OF THIS TITLE, any officer, director, stockholder, attorney, or agent of any corporation or association which violates any of the provisions of this title, ~~(except part 7 of article 4 and article 15),~~ article 7 of title 12, and article 14 of title 24, C.R.S., who participates in or aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of said references, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than one year and by a fine of not more than one thousand dollars, and any officer aiding or abetting in any contribution made in violation of said references is liable to the company or association for the amount so contributed. No person shall be excused from attending and testifying or producing any books, papers, or other documents, before any court, upon any investigation, proceeding, or trial, for a violation of any of the provisions of said references upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ SUCH PERSON may tend to incriminate or degrade him OR HER; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he OR SHE may so testify or

produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him OR HER upon any criminal investigation or proceeding.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2003, and shall apply to offenses committed on or after said date.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

DRAFT

*Colorado Legislative Council Staff*

# STATE and LOCAL FISCAL IMPACT

| | | | |
|---|---|---|---|
| **Drafting Number:** | LLS 03-0110 | **Date:** | November 1, 2002 |
| **Prime Sponsor(s):** | Rep. Clapp<br>Sen. Hagedorn | **Bill Status:** | Health Care Task Force |
| | | **Fiscal Analyst:** | Janis Baron (303-866-3523) |

**TITLE:** CONCERNING PENALTIES RELATING TO UNAUTHORIZED INSURANCE POLICIES.

| Fiscal Impact Summary | FY 2003/2004 | FY 2004/2005 |
|---|---|---|
| **State Revenues**<br>General Fund | Minimal Fine Revenue | |
| **State Expenditures**<br>General Fund | $ 0 | $ 0 |
| **FTE Position Change** | 0.0 FTE | 0.0 FTE |
| **Other State Impact:** None | | |
| **Effective Date:** July 1, 2003, and shall apply to offenses committed on or after that date. | | |
| **Appropriation Summary for FY 2003/2004:** None Required | | |
| **Local Government Impact:** See Local Government Impact section of fiscal note. | | |

## Summary of Legislation

The bill increases the penalty for the sale of policies by insurance companies not authorized to do business in Colorado from a misdemeanor to a class 1 misdemeanor.

## State Revenues

The bill increases the penalty for the sale of policies by insurance companies not authorized to do business in Colorado from a misdemeanor to a class 1 misdemeanor. Under current law, the criminal penalty is punishable by a fine of $100, two months imprisonment in a county jail, or both. The criminal penalty of a class 1 misdemeanor is noted below:

| Class 1 Misdemeanor — Minimum Sentence | Class 1 Misdemeanor — Maximum Sentence |
|---|---|
| $500 fine, 6 months imprisonment, or both | $5,000 fine, 18 months imprisonment, or both |

The bill may result in additional fine revenue as a result of this increased offense. Fine revenue not otherwise appropriated is deposited into the state General Fund. It is at the discretion of the court to impose a fine, a jail sentence, or both. Although the actual amount of fine revenue under the bill cannot be determined, the fiscal note assumes a minimal increase.

**State Expenditures**

The bill will neither increase nor decrease state expenditures.

**Local Government Impact**

The bill increases the penalty for the sale of policies by insurance companies not authorized to do business in Colorado from a misdemeanor to a class 1 misdemeanor. The bill increases the jail sentence from 2 months to anywhere between 6-18 months. This bill may have a fiscal impact on local governments should any misdemeanor convictions and associated jail sentences increase. While the daily cost to house an offender in a county jail facility varies, the FY 2002-03 rate the state pays local jails for holding state inmates is $51.65 per day. Thus, the cost to house a person convicted of a class 1 misdemeanor would range anywhere from $9,297 to $27,891. Because the court has the discretion to impose a fine, jail sentence, or both, any cost to local governments cannot be determined at this time. The fiscal note assumes a minimal local government impact, if any.

**Departments Contacted**

Judicial Regulatory Agencies